6-1-1976

James Jenkins, Sr. v. Commonwealth of Kentucky

Reply Brief 1976-SC-0130

REPLY BRIEF

SUPREME COURT OF KENTUCKY

FILE NO. 76-130

JAMES JENKINS, SR. — APPELLANT

VS. — APPEAL FROM HARLAN CIRCUIT COURT
HON. JAMES C. BROCK, JUDGE

COMMONWEALTH OF KENTUCKY — APPELLEE

REPLY BRIEF FOR APPELLANT

JACK EMORY FARLEY
PUBLIC DEFENDER
COMMONWEALTH OF KENTUCKY
625 LEAWOOD DRIVE
FRANKFORT, KENTUCKY 40601

Vincent D. Giovanni
VINCENT D. GIOVANNI
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF SERVICE:

I hereby certify that a copy of the foregoing Reply Brief For Appellant has been mailed to the Hon. James C. Brock, Judge, Harlan Circuit Court, Harlan County Courthouse, Harlan, Kentucky 40831; Hon. Wix Unthank, Commonwealth Attorney, 26th Judicial District, Harlan, Kentucky 40831; and Hon. Robert F. Stephens, Attorney General, Commonwealth of Kentucky, Capitol Building, Frankfort, Kentucky 40601, this 1st day of June of 1976.

Vincent D. Giovanni

SUPREME COURT OF KENTUCKY

FILE NO. 76-130

JAMES JENKINS, SR. APPELLANT

VS. APPEAL FROM HARLAN CIRCUIT COURT
HON. JAMES C. BROCK, JUDGE

COMMONWEALTH OF KENTUCKY APPELLEE

* *

PURPOSE OF THIS REPLY BRIEF

The purpose of this reply brief is to respond to the arguments asserted by the Commonwealth in the Appellee's brief.

STATEMENT OF QUESTION PRESENTED

DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR AND DENY THE APPELLANT HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHEN IT REFUSED TO CONTINUE THE CASE AND ORDER A PSYCHIATRIC EXAMINATION TO DETERMINE THE APPELLANT'S COMPETENCY TO STAND TRIAL?

ARGUMENT

THE TRIAL COURT COMMITTED SUBSTANTIAL PREJUDICIAL ERROR AND DENIED THE APPELLANT HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHEN IT REFUSED TO CONTINUE THE CASE AND ORDER A PSYCHIATRIC EXAMINATION TO DETERMINE THE APPELLANT'S COMPETENCY TO STAND TRIAL.

In response to the appellant's claim that he was entitled to a psychiatric examination to determine his sanity or competency to stand trial, the Commonwealth has argued that there was an insufficient demonstration of such "reasonable grounds" as would have required the trial court to order an examination. The Commonwealth has attempted to minimize the meaning

of trial counsel's affidavit which stated counsel's belief that the appellant should have been given a psychiatric examination. The Commonwealth argued:

> . . .The affidavit itself contains only the statement that of the three or four times that the attorney counseled with the appellant, the appellant denied guilt. It is submitted that such a denial is normal, and this is all the affidavit contains, nothing more. . .(Appellee's Brief, p. 4)

This statement is a pure distortion of the meaning of the affidavit. What the affidavit does say is that counsel had attempted to talk with the appellant on three or four occasions and that he had been "unable to elicit any reply" from the appellant to any questions he asked. All the defendant would say was that he was not guilty of the crime (T.R., 4).

What is most important about this affidavit is the facts which are implicit in the statements of counsel. Under these circumstances counsel would not have been able to learn of any possible witnesses or of any possible defense. He would have had no assistance whatsoever in the preparation of the case for trial. He would have been unable to communicate to the appellant his various Constitutional rights and then ascertain whether they were understood. He would have been unable to discuss with the appellant the possibility of a guilty plea. Under these circumstances it was impossible for counsel to properly prepare the case and to render the type of assistance to which the appellant was Constitutionally entitled.

The Commonwealth argued in their brief that an affidavit from the accused would not have been sufficient to require the Court to order a psychiatric examination. They go on to suggest that an affidavit from trial counsel would have been inferior to the accused's affidavit. This is an illogical

argument which is contrary to the law in many jurisdictions. No single person could be better informed and qualified to suggest that an accused should be afforded a psychiatric examination than his own counsel.

At least five of the federal circuit courts hold that the motion and affidavit of counsel for a psychiatric examination requires the trial court to order the examination unless the Court determines that the motion is frivolous or not made in good faith, or does not set forth the grounds relied upon by the movant for believing that the accused may be mentally incompetent. See: Lewellyng v. United States, 320 F.2d 104, 105 (5th Cir. 1963); United States v. Walker, 301 F.2d 211 (6th Cir. 1962); Meador v. United States, 332 F.2d 935, 937 (9th Cir. 1964); Krupnick v. United States, 264 F.2d 213, 216 (9th Cir. 1959); Wear v. United States, 94 U.S. App. D.C. 325, 218 F.2d 24, 26 (1954); United States v. Knohl, 379 F.2d 427 (2nd Cir. 1967).

Also, as the Supreme Court of the United States stated in Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975):

> Although we do not of course suggest that courts must accept without question a lawyer's representations concerning the competence of his client, see United States ex rel. Rizzi v. Follette, 367 F.2d 559, 561 (CA2 1966), an expressed doubt in that regard by one with "the closest contact with the defendant," Page v. Robinson, 383 U.S., at 391, 86 S.Ct. at 845 (Harlan, J., dissenting), is unquestionably a factor which should be considered.

The Commonwealth argues that the rationale of Drope should not be followed because the facts are different than in the appellant's case. This is a ridiculous argument. The Supreme Court accepts only a very small percentage of the cases which are brought before it in Petitions for Certiorari. It is well known that the Court selects only cases which it

believes will have general importance to the body of American Constitutional Law. To argue that Supreme Court decisions are limited to their facts is to argue against the role that the Supreme Court plays in our legal system. When the Court in Drope discussed the weight to be accorded the assertions of trial counsel as to his client's competency, the Court was speaking in general terms not limited to the peculiar facts of the case. Therefore, this Court should not disregard the statements of the United States Supreme Court as the Commonwealth suggests.

Lastly, the appellee equates the appellant's argument with an argument for an absolute right, upon motion, for a psychiatric examination. We can hardly agree that this case presents an argument for an absolute right where trial counsel was of the opinion that a determination of sanity was essential; where the defendant would not respond to any questions from counsel; where counsel was unable to provide effective assistance and properly prepare the case; and where the appellant was accused of a bizzare crime involving deviant, perverse sexual behavior with his own son, a child under the age of twelve.

Under these circumstances the affidavit of counsel should have been sufficient to require the trial court to conduct a psychiatric examination of the appellant. The Commonwealth's argument places the appellant in a "Catch 22" situation. Since the appellant would not converse with counsel, counsel was unable to provide the Court with more specific reasons for the examination. Yet this unsolvable and incurable problem is the basis for the appellee's argument that the appellant failed to make a sufficient demonstration that an examination was necessary. There was simply no way in which counsel could have presented additional reasons for the examination.

Therefore, this Court should hold that it was incumbent upon the trial court to conduct the requested psychiatric examination and that the failure to do so constituted reversible error.

CONCLUSION

For the reasons stated herein, and for the reasons presented in the appellant's original brief, the appellant now respectfully requests this Honorable Court to reverse the conviction below.

Respectfully submitted,

Vincent D. Giovanni

VINCENT D. GIOVANNI
ASSISTANT PUBLIC DEFENDER